

SUBCOMMITTEE NO. 3

Agenda

Health, Human Services, Labor & Veteran's Affairs

Chair, Senator Denise Ducheny

Senator Wesley Chesbro
Senator Dave Cox



April 24th, 2006

10:00 AM

Room 4203
(John L. Burton Hearing Room)

(Diane Van Maren)

<u>Item</u>	<u>Department</u>
4300	Department of Developmental Services--CADDIS
4260	Department of Health Services—<i>Selected Issues</i> <ul style="list-style-type: none">• Public Health Issues• Medi-Cal Program Issues

PLEASE NOTE:

Only those items contained in this agenda will be discussed at this hearing. *Please* see the Senate File for dates and times of subsequent hearings.

Issues will be discussed in the order as noted in the Agenda unless otherwise directed by the Chair. Thank you.

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A. Special Order—Update on the CA Developmental Disabilities System (CADDIS)

Issues. After extensive discussion in the April 3rd hearing, the Subcommittee requested the Department of Developmental Services (DDS) to report back on April 24th regarding any progress towards resolution of issues involving the implementation of CADDIS.

Additional Background. Significant issues continue to swirl within the Administration regarding the implementation of the California Developmental Disabilities Information System (CADDIS).

The lack of implementation has led to the loss of at least \$50 million in federal funds. Additional resources—potentially tens of millions in General Fund support—are likely to be needed to remedy the limitations of CADDIS or to construct an entirely new system. The ability of the Regional Center system and the DDS to conduct core aspects of program operations, such as case management, provider reimbursement, and overall fiscal monitoring are directly affected by the failure to implement CADDIS or a similar information system.

Due to continued delays in implementation, **California will lose over \$50 million in federal funds over the next two-years (at least \$19.9 million in 2005-06 and \$31.8 million in 2006-07). The receipt of these federal funds could have been used to off-set General Fund support.**

The failure to implement CADDIS is also affecting implementation of the Self-Directed Services Model which was approved for expansion in the Budget Act of 2005. Under this model, consumers can choose services and supports from a comprehensive menu of options using a finite budget (90 percent of historical aggregate expenditures). However expansion of this program has been linked to the roll-out of CADDIS. As such, the Self-Directed Services Model has been delayed in the current year.

At the request of the Department of Finance, and as agreed to by the Legislature, Budget Act Language was included in the Budget Act of 2005 to require the DOF to report to the Legislature by October 2005 on its strategy to resolve problems on the CADDIS Project. In addition, a \$2 million (General Fund) augmentation was provided to conduct the independent project review (at the request of the Administration).

The DOF strategy was to include, but not be limited to, (1) identification of problems or issues on the project, and (2) actions, costs and timeframes broken out by budget year and future years to correct those problems or issues. The DOF was also to provide an “independent project review report” (done by a consultant.)

In October 2005 an independent project review report (prepared by “Information Integration Innovation & Associates, Inc.) was provided to the Legislature. However the DOF analysis of the report, as well as a strategy for resolution of problems has not yet been provided and it is unknown at this time when it may be provided. It should be noted that the independent project review did identify serious concerns about completing CADDIS. The report did however recommend that CADDIS be continued as a project. However, to be successful, CADDIS has many more obstacles to traverse.

Subcommittee Staff Comment. Subcommittee staff has requested a critical path chart from the Administration regarding CADDIS implementation, as well as a fiscal summary regarding options for problem resolution. The Legislative Analyst's Office has also made additional requests in an effort to better ascertain what options are available for problem resolution. **However, no comprehensive information has been forthcoming from the Administration, though the DDS has responded to issues regarding system progress and the pilot testing.** We have been advised by the Administration that the status of the CADDIS project is under review. But that is all.

Questions. The Subcommittee has requested the DDS to respond to the following questions.

1. DDS, Please provide an update on CADDIS and the status of the project.
2. DOF and DDS, When can the Legislature receive information from the Administration regarding implementation options and potential costs?
3. DDS, Can federal fund support be obtained to mitigate future General Fund expenditures?

B. ITEMS RECOMMENDED FOR “VOTE ONLY”—Department of Health Services

1. Extend for Two-Years Staff for In Home Supportive Services Waiver

Issue. The DHS is requesting to extend four existing positions for two more years (to June 30, 2008) for expenditures of \$371,000 (\$185,000 General Fund). These positions are used to ensure compliance with federal requirements regarding the In Home Supportive Services (IHSS) Waiver.

The IHSS Waiver was approved in 2004 and it allows California to obtain federal funds for 26,000 individuals in the IHSS Residual Program previously supported by state and county funding. The projected savings to the General Fund is about \$213 million annually.

As the single state Medicaid Agency, the DHS is required to administer all federal waiver programs, monitor the health and safety of waiver participants, oversee the financial aspects of these federal programs, and ensure cost neutrality. The DHS administrative oversight and monitoring will be required to ensure continued renewal of the Waiver.

Key activities of the four positions include the following:

- Provide ongoing administration of the IHSS Wavier by providing technical assistance, advice and policy consultation to the CA Department of Social Services (CDSS);
- Provide knowledge and expertise in reviewing reports to verify compliance with federal and state laws, regulations, and federal assurances;
- Revise and maintain ongoing waiver monitoring protocols, and assist in monitoring activities by CDSS and local agencies;
- Monitor and track payments and invoices related to the Waiver; and
- Report detailed fiscal information to the federal CMS;

Subcommittee Staff Recommendation. It is recommended to approve as proposed. The workload was justified and is continuing.

2. Oversight of the Fiscal Intermediary Contract for Medi-Cal

Issue. The DHS is requesting to make permanent three limited-term positions which expire as of June 30, 2006 for increased expenditures of \$294,000 (\$74,000 General Fund).

These positions are used to provide oversight and monitoring of the Medi-Cal Fiscal Intermediary contract (presently with Electronic Data Systems—EDS) which maintains the CA Medicaid Management Information System (CA-MMIS). This system process about \$13 billion in Medi-Cal fee-for-service payments annually and has linkages to other DHS systems, such as the Breast and Cervical Cancer detection and treatment programs, as well as with other departments (such as

the MRMIB for the Healthy Families Program). **This contract is one of the largest and most complex contracts in state government.**

These staff would contribute to the timely implementation of new program changes, help reduce the incidence of significant system errors, install changes to identify program fraud, and approve system changes resulting in millions of dollars in program savings.

Specific activities include the following:

- Review all invoices in detail to ensure claimed contractor staffing levels, project hours, purchases (software and equipment), are correct and in conformance with approved levels;
- Review, approve and monitor all project deliverables for completeness and accuracy and conformance to approved work plans;
- Respond to provider written communications and telephone calls regarding complex claims adjudication problems;
- Direct the contractor provider relations organization which is responsible for disseminating monthly programmatic bulletins to providers, holding training seminars for providers on billing procedures, and responding to inquiries from providers regarding claims adjudication.
- Review contractor submitted reports for accuracy and contract compliance;
- Evaluate program areas for potential cost savings and anti-fraud improvements;
- Implement any new anti-fraud measures as requested; and
- Monitor problem statements and payment corrections related to claims processing to ensure the errors are valid, corrected and any erroneous payments are corrected, including determining if the problem was due to a contractor error.

The Subcommittee is also in receipt of a letter from the DOF's Office of State Audits and Evaluations unit. This unit conducted a review of these positions, along with others, and recommended for the DHS to convert these three limited-term positions to permanent status. They determined that there was sufficient existing and proposed workload within this area to warrant this conclusion.

Subcommittee Staff Recommendation. It is **recommended to approve the request.** No issues have been raised.

3. Drug & Device Manufacturer Program—Trailer Bill Language (“open issue”)

Issue and Prior Subcommittee Hearing (March 27th). The Subcommittee approved the DHS request to increase by \$815,000 (Drug and Device Safety Fund) to fund 7 positions to conduct new licensing inspections, renewal licensing inspections, and to process various information and reports related to these inspections.

In addition, the DHS is proposing trailer bill language to change the licensing fee collection from annually to every two years (i.e., biennially). Therefore the fees paid by drug and medical

device manufacturers would be paid upfront for a two-year period, versus a one-year period as now done. **This issue was left “open” by the Subcommittee pending the receipt of information from the DHS regarding the perspective of the drug and medical device manufacturers on this proposed language.**

At the request of the Subcommittee, the DHS contacted drug and medical device manufacturers to determine if they had any concerns in going to a biennial licensing fee arrangement. **Of those surveyed, 86 percent or 36 manufacturers supported this change or expressed no concerns with the implementation.**

Overall Background on the Drug and Medical Device Manufacturer Programs. These programs provide consumer protection from unsafe, contaminated, mislabeled, and fraudulent drugs (blood pressure medications, injectable drugs, antibiotics). New drug and medical device manufacturers are required to be inspected and licensed by the DHS prior to distributing products. In addition, AB 1496 (Olberg), Statutes of 2000, requires biennial inspections of existing licensed drug and medical device manufacturers. **All licensing fees from drug and medical device manufacturers and all enforcement fines and penalties are deposited in the Drug and Device Safety Fund.** The existing licensing fees are shown in the table below.

Drug or Medical Device Manufacturer	License Fee (as of July 2005)
New license	\$1,600
Renewal license	1,300
Special or small (as defined)	\$850
Prescription drug marketing act	\$100

Note: The licensing fee shown above will double if the state proceeds with a biennial licensing process, versus the existing annual process. The fee of course would only be paid once every two-years under the proposed trailer bill legislation.

The Administration raised the fees for this program by about 25 percent effective as of July 1, 2005. According to the “Fund Condition Statement” provided in the Governor’s Budget for 2006-07, the DHS is projecting a Drug and Device Safety Fund surplus of \$7.9 million, including the expenditures for this request.

Subcommittee Staff Recommendation. It is recommended to adopt the Administration’s proposed trailer bill language since about 86 percent of those surveyed by the DHS were either supportive of the change or did not express a concern with the change.

4. Convert Limited-Term Position to Permanent Status—Office of Long-Term Care

Issue. The budget proposes to establish an Office Technician-Typist position, which sunsets as of June 30, 2006, as a permanent position. An increase of \$57,000 (\$28,000 General Fund) is requested for this purpose. The position serves as the single support person to the Office of Long Term Care which includes eleven professional staff.

Subcommittee Staff Recommendation. It is recommended to approve the request. No issues have been raised and the workload is justified.

5. Third Party Liability—Convert 15 Limited-Term Positions to Permanent

Issue. The DHS is **requesting an increase of \$989,000 (\$247,000 General Fund) to convert 15 limited-term positions, set to expire as of June 30, 2006, to permanent. These positions include** (1) five Tax Compliance Representatives, (2) two Senior Tax Compliance Representatives, (3) six Program Technician II's, and (4) two Program Technicians.

These positions were provided in 2003 to address issues related to estate recovery and third party liability recoveries in the Medi-Cal Program. These positions recover Medi-Cal costs from the estates of certain decreased Medi-Cal beneficiaries and from other liable third parties.

According to the DHS, these positions are associated with at least \$21.9 million (\$10.9 million General Fund) in increased annual collections.

Subcommittee Staff Recommendation. It is recommended to approve the proposal. No issues have been raised by Subcommittee staff or the Legislative Analyst's Office.

6. Domestic Violence—Unserved and Underserved

Issue. The DHS is **requesting an increase of \$350,000 (General Fund) to continue the same funding level of \$1.1 million that was provided in the Budget Act of 2005.** The funding is supporting technical assistance and training to 94 statewide domestic violence shelter agencies through the award of three Requests for Proposal as referenced below. These contractors will assist the Domestic Violence shelters in serving the unserved and underserved populations.

The \$350,000 General Fund request is to backfill for one-time only funds that were available through the Nine West Settlement Agreement. Therefore with the approval of this budget request, the funding mix would be \$1.1 million (\$865,000 General Fund and \$235,000 Domestic Violence Training and Education Fund).

Summary Status of Requests for Proposals (RFPs). The DHS released three RFPs to address the needs of the unserved/underserved community. These consisted of (1) a mental health and substance abuse training and technical assistance project, (2) a developmentally disabled training and technical assistance project, and (3) a lesbian, gay, bisexual and transgender training and technical assistance project. According to the DHS, these awards are going out this year.

The DHS identified these needs for training and technical assistance through a survey that was conducted last year.

Subcommittee Staff Recommendation. It is recommended to approve the request. Approval of the Administration's request would conform to the Assembly's action on this issue.

C. ITEM FOR DISCUSSION---Department of Health Services

1. Establish a Continuing Education Program for Environmental Health Specialists (See Hand Out)

Issue. The DHS is proposing an increase of \$130,000 (Registered Environmental Health Specialist Fund) and trailer bill language to establish a continuing education program for Registered Environmental Health Specialists (REHS). The DHS would use the \$130,000 to hire a contractor to establish the continuing education program.

In order to establish this new program, the DHS is proposing trailer bill language to (1) increase fees, and (2) establish broad new authority for the DHS to deny, amend, restrict, revoke and suspend a registration under the program. **The table below displays the fee adjustments necessary to implement this proposal.** The RHS Program is fee supported and about \$200,000 is presently collected on an annual basis. The fees have not been increased in over 10 years.

Table: Proposed Fee Increases for Establishing a Continuing Education Program

Types of Fees	Current Fee	Proposed Fees	Percent Fee Increase
Application	\$73	\$95	30 percent
Examination	\$63	\$126	50 percent
Biennial Renewal	\$92	\$175	47 percent
Retirees	\$25	NA	0

The contractor's core responsibilities would be as follows:

- Conduct an occupational analysis of the profession to determine the knowledge, skills and abilities needed to perform effectively on the job, including a complete job audit of environmental health agencies in Northern and Southern California;
- Identify the core competencies in the REHS profession;
- Assist the DHS in the preparation of a regulation package that will establish the requirements of the continuing education program;
- Assist the DHS in the review and approval of continuing education providers;
- Assist the DHS in the review and approval of continuing education courses;
- Assist the DHS in the preparation of provider lists and approved course information lists;
- Maintain a computer database system to track and monitor continuing education units for REHSs;
- Develop an audit tool to determine if the REHSs have met the continuing education requirements;
- Assist in the preparation of enforcement action against providers for failure to meet acceptable requirements;
- Conduct investigations of REHSs that fail to meet the continuing education requirements; and
- Assist in enforcement actions against REHSs for failure to meet requirements.

Additional Background—Registered Environmental Health Program. The REHS Program was established in 1945 to assure that persons who perform activities related to environmental health

protection meet specific standards of education, training, and experience, thus ensuring professional competency.

The DHS has 1.5 positions to operate the program. They are responsible for reviewing applications for registration, conducting examinations, issuing registrations and renewals, reviewing and approving local government REHS intern training programs, investigating complaints against persons registered by the program, and developing registration revocation actions.

REHSs are employed by local governmental agencies to conduct investigations, inspections, and assessments of environmental conditions and public health problems. The specialists also secure compliance with applicable laws and standards that have been established to protect public health and safety. Their scope of responsibility covers public health issues related to food, water, sewage disposal, vector control, toxic substances, air quality, recreational health, bioterrorism, and housing.

Subcommittee Staff Recommendation. It is recommended to deny the proposal. The proposal seeks to establish new responsibilities and should be done through policy legislation. For example, the trailer bill legislation (Section 22 of the Hand Out) provides the DHS with very broad authority which should be discussed in a policy venue.

Further, the fee increases proposed represent a substantial increase. It may be possible for the DHS to conduct some of the proposed consultant work using existing staff and thereby, reduce the need for such a large fee increase.

It should be noted that during the 2000-01 Session of the Legislature, SB 1226 was introduced which would have raised fees for this program. Subsequently the bill was amended and used for other purposes.

Question. The Subcommittee has requested the DHS to respond to the following question.

1. **DHS,** Please provide a brief summary of the request.

2. DHS Licensing and Certification (L&C) Division Staff Increase (See Hand Out)

Issue. The DHS is requesting an increase of \$17.6 million (fee supported special fund—Licensing and Certification Fund) to (1) hire 141 new positions in the budget year, and (2) contract with Los Angeles County to perform the functions of licensing and certification (as has been traditionally done). In addition, comprehensive trailer bill legislation is proposed.

This proposal is in *partial* response to hearings convened by Senator Ortiz as Chair of the Senate Health Committee, and Senator Elaine Alquist as the Chair of the Subcommittee on Aging, and is part of the Administration’s restructuring of licensing and certification functions which is proposed to be a multi-year project.

The positions requested are intended to *augment* the following core L&C functions:

- Conduct annual certification surveys for participation in the federal Medicare and Medicaid (Medi-Cal in California) programs;
- Conduct complaint investigations under both federal certification requirements *and* state licensing requirements;
- Conduct surveys of “state licensed-only” facilities, such as certain primary care clinics, Adult Day Health Care Facilities, Home Health Agencies, and Surgery Clinics;
- Review the implementation of medication error plans in General Acute Care Hospitals and Surgery Clinics (Pharmaceutical Consultant positions); and
- Expand review of Skilled Nursing Facilities (SNFs) regarding substandard pharmaceutical care and medication misuse (Pharmaceutical Consultant positions).

The requested 141 positions and their classifications are shown in the table below.

Classifications	Requested Positions
Health Facility Evaluator Nurse (HFEN)	50
Health Facility Evaluator Nurse (HFEN)	23 (two-year limited term)
SUBTOTAL (Registered Nurses)	73
Health Facility Evaluator I (LVN or Psych Tech level)	23
TOTAL Additional Surveyors (RNs and LVNs)	96
Health Facility Evaluator II (Supervisor)	16
Health Facility Evaluator II (for training purposes)	3
Pharmacy Consultant II	7
Pharmacy Consultant II (Supervisor)	1
Associate Governmental Program Analyst	1
Program Technicians	16
Associate Personnel Analyst	1
TOTAL Other Support Positions	55
TOTAL REQUEST	141

Each of the specific functions and workload associated with the 141 positions are discussed below.

L&C Survey Work (See Hand Out) (96 Positions). The DHS conducted a consolidated analysis of their federal survey work, complaint investigations and state licensing-only facilities work. **Based upon their workload analysis, an additional 96 surveyor positions are needed to address these L&C functions.**

The workload analysis assumes that each surveyor can provide 1,364 hours of productive work annually (1,800 hours equates to a full time position). The DHS notes they are using a lower productivity standard for the surveyor positions to more accurately reflect the time the surveyor is in the field conducting work directly attributable to core licensing and certification functions (i.e., survey preparation time, on-site survey time, travel time, and report writing). The remaining hours are utilized for training purposes and various administrative functions, such as staff meetings, general office work, data analysis and other “non-direct” survey work.

It should be noted that of these 96 surveyor positions, 23 positions are proposed by the DHS to be at the Health Facility Evaluator I (HFE I) level. The DHS states that these 23 HFE I positions can be filled using Licensed Vocational Nurses (LVN) or Psychiatric Technicians, in lieu of using the Registered Nurse classifications such as the Health Facility Evaluator Nurse level. Using the less experienced HFE I positions reduces expenditures by \$434,000 annually.

The DHS states that the 23 HFE I positions would be required to pass the federal minimum qualification test and would perform the less complex clinical assessments of quality of care. The DHS also notes that one Health Facility Evaluator Nurse classification is required to participate in each survey anyway. **Finally, the DHS states they will evaluate whether the use of LVNs and Psychiatric Technicians can pass the federal test and whether the quality of the survey and complaint investigations has been impacted.**

L&C Survey Work—Supervisors and Support (33 Positions). In order to provide appropriate supervision, maintain surveyor quality assurance, and provide appropriate support staff, the DHS is requesting 33 positions (primarily clinical supervisors and Program Technicians). These positions are based upon a workload standard that corresponds to the number of surveyor positions.

L&C Training Section (3 Positions). The training of new surveyors is an intensive effort to ensure the registered nurses are competent to make critical assessments on clinical and related quality of care in health facilities. Presently there is 7 professional level training staff. These staff provide highly technical and specialized clinical training.

Three Health Facility Evaluator (HFE) II positions are requested to address increased workload. Due to limits in the availability of federal training slots, the L&C trainers are being required to provide training for California staff and to develop training materials to integrate federal survey protocol changes into L&C’s survey protocol and procedures. In addition, the federal CMS

requires that states provide continuing on-site training for new surveyors and quality assurance reviews for all surveyors. This workload coupled with additional survey staff means that the training function needs to be expanded.

Pharmaceutical Consultant Medication Error Workload (7 Pharmacists). The DHS is requesting these positions to (1) review implementation of medication error plans in General Acute Care Hospitals and Surgery Clinics to meet requirements of existing statute (SB 1875, Statutes of 2000), and (2) address issues in Skilled Nursing Facilities with noted indicators of substandard pharmaceutical care and medication misuse. DHS notes that pharmacy generated findings will result in a more comprehensive plan of correction and possibility of long-term correction by the provider. Without these positions, a comprehensive review of the pharmaceutical services could not be adequately performed.

Los Angeles County Contract. The DHS contracts with Los Angeles County to survey facilities within the county, unless the facility is owned and operated by the county. This contracting process has been the standard procedure for many years. The budget proposes an increase of \$2.7 million (Licensing & Certification Fund) for this purpose.

Additional Support Personnel (2 Positions). The DHS is requesting an Associate Governmental Program Analyst position for the Accounting Section and an Associate Personnel Analyst position for the Personnel Management Section. These positions are needed to (1) process travel claims, payroll documents, and payroll checks for the surveyors, and (2) conduct personnel work associated with the addition of the proposed new staff.

DHS Needs to Develop a New Fee Structure. The Administration is presently reviewing changes to the existing licensing and certification fee structure to address their proposed new positions and future ongoing resource needs. **This review will likely not be completed until just prior to the May Revision. As such, the amount of fee increases needed for each type of facility is not known at this time.**

Currently, the Administration is proposing to do the following:

- Revise the methodology for assessing licensing and certification fees to adjust all fee amounts on an annual basis commensurate with the cost of work performed;
- Eliminate the current exemption from licensing fees for the University of California health facilities and certain local public health facilities; and
- Establish a special fund—Licensing and Certification Fund—and authorize all fees collected for this purpose to be placed in the fund.

The DHS notes that fees are not presently equitable distributed based on the costs of licensing and regulating the various categories of health facilities and health care staff. Some of the assessed fees are flat rates set in statute and others are adjusted annually in the Budget Act. Further, hospital and most nursing home facilities are adjusted annually by the DHS pursuant to Section 1266 of the Health and Safety Code. For various reasons, the fees paid by these facilities unfairly subsidize survey activities conducted in facilities that have their fees fixed in statute.

Current statute exempts government-operated facilities, including the University of California facilities, from paying licensure fees. As a result, the costs related to licensing these exempt facilities are presently borne by the General Fund. The Administration is proposing to begin charging the University of California facilities as well as some others.

Background—Vacant and Unallocated Position Reductions and Its Effect on L&C Staff. As shown below, the DHS has deleted position authority in the L&C area due to unfilled position vacancies (i.e., Section 31.5) and to meet “unallocated” reduction targets for the department as a whole. As has been well documented, nursing classifications are difficult to fill and the DHS has historically not been effective at recruitment and retention efforts. **Therefore, the DHS has chosen to use this area for reduction purposes.**

In total, 166 positions have been reduced from prior levels. Of these total positions, 79 positions or 48 percent, have been nursing-related positions (primarily HFENs) The largest reduction occurred in 2003-04 in which the DHS chose to reduce positions in this area to meet their unallocated reduction amount (as designated by the Department of Finance).

- 2000-2001 (vacancy reduction) 21 positions were reduced of which 20 were Health Facilities Evaluation Nurses.
- 2001-02 (unallocated reduction) 15 positions were reduced and all of them were Health Facilities Evaluation Nurses.
- 2002-03 (vacancy reduction) 39 positions were reduced and all were professional classifications (HFENs, analysts and pharmacy-related), except for 11 that provide clerical and data support.
- 2003-04 (unallocated reduction) 91 positions were reduced of which 32 were nursing classifications, 15 were other professional classifications (analysts, information specialists, and legal) and 44 that provide clerical and data support.

Background—Significant Concerns with Nursing Facility Oversight by DHS. Senator Ortiz, Chair of the Senate Health Committee, and Senator Elaine Alquist, Chair of the Subcommittee on Aging, conducted extensive hearings regarding the DHS’ L&C operations. Through these hearings serious problems were discussed and identified, including issues raised by various advocacy and consumer protection organizations, as well as those raised by recent investigations conducted by the U.S. Government Accountability Office (GAO).

The GAO report documents reviews of California’s nursing homes conducted from 2003 through January 2005. These reviews showed that the DHS had failed to identify *serious deficiencies in nursing homes*. For example, there is a significant lack of timely follow-up on public complaints alleging harm. Less than half of these complaints were being investigated by the DHS within the ten-day timeframe required by the federal rules. Numerous other inadequacies were also documented, including lack of enforcement on the part of the DHS.

Various publications, including the Los Angeles Times, San Francisco Chronicle and Sacramento Bee have also chronicled concerns regarding the quality of nursing home care in California.

As the result of the joint hearings, the Joint Legislative Audit Committee has requested the Bureau of State Audits to conduct an audit of the DHS' L&C Division. **In addition, SB 1312 (Alquist), has been introduced to address additional policy issues regarding enforcement of state law and regulation.**

Additional Background—Licensing and Certification. The DHS L&C conducts licensing and certification inspections (surveys) in facilities to ensure their compliance with minimum **federal certification** and **state licensing** requirements in order to protect patient health and safety. **L&C is also responsible for investigating complaints from consumers, consumer representatives, the Ombudsmen, and anonymous sources, against health facilities.** L&C is a statutorily mandated enforcement agency.

Certification is a federal prerequisite for health facilities and individual providers wanting to participate in and receive reimbursement from both Medicare and Medicaid (Medi-Cal). The DHS is the designated entity under contract with the federal CMS to verify that health facilities meet minimum certification standards. **Federal grant funds are allocated to California to conduct work associated with Medicare. These funds have been fairly flat and have not historically kept abreast of workload needs. With respect to Medi-Cal certification, the state must provide a 50 percent General Fund match to obtain the federal funding. Presently, fees are collected from the various facilities/entities and are placed in to the General Fund. As such, these fees may *not* be being used exclusively for licensing and certification purposes.**

Among other requirements, state law requires that periodic licensing inspections be conducted for “licensed-only” facilities. These include all health care facilities that are not certified to receive Medicare or Medi-Cal reimbursement as well as two other categories—Adult Day Health Care and hospitals. The DHS notes that resources are seriously challenging the DHS’ ability to conduct licensing inspections, especially with the frequency required in state law.

The DHS contends that through policy legislation enacted in 1993, which amended Section 1279 of the Health and Safety Code, L&C is not required to conduct a periodic licensing inspection but must conduct periodic federal certification surveys. They state that this includes all facility categories except for hospitals, Adult Day Healthcare Centers and clinics. **This interpretation is in dispute and SB 1312 (Alquist), as amended, is intended to clarify this area of law.**

The other major means of addressing quality of care problems is through timely and thorough investigation of complaints from patients, clients, residents, family, friends, Ombudsman, facility staff, advocacy groups, law enforcement, and anonymous sources.

Additional Background-- Recent Retention & Recruitment Actions. In December 2005, the U.S. District Court (*Plata v. Schwarzenegger*) ordered the implementation of R & R differentials for physicians and surgeons and specific nursing classifications at all 33 state prisons to address high vacancy rates for these staff and inadequate health care services. **The Plata court order did not account for any consequences of the ruling upon other state agencies, including the DHS.**

Both the CA Department of Corrections and Rehabilitation (CDCR), and the Department of Mental Health (DMH) have now recently received “recruitment and retention (“R & R”) pay

differentials for physicians and surgeons and specific nursing classifications (over an 18 percent increase).

This pay differential across agencies is an issue that the Administration will need to address in order to recruit and maintain nursing classifications within the DHS L&C Division.

Legislative Analyst's Office Recommendation—Deny 63 Positions. The LAO recommends a total reduction of \$8.2 million (Licensing and Certification Fund) by eliminating 63 positions from the DHS request and deleting \$346,000 in contract funds for Los Angeles County. Specifically, the LAO believes that the DHS workload productivity level for the surveyor positions is too low and that a higher level of productive hours—1,503 hours—should be used. The 1,503 hours per surveyor would reduce the request by 41 surveyor positions. Subsequently, the positions requested for supervising, pharmacy review and related support, would be equally reduced. As such, a total of 63 positions would be eliminated.

Subcommittee Staff Recommendation. It is recommended to take the following actions: (1) augment the budget request by \$434,000 (Licensing and Certification Fund) and change the 23 HFE I positions to the more experienced Registered Nurse classification of Health Facility Evaluator Nurse; (2) Change the 23 limited-term Health Facility Evaluator Nurse positions to permanent; (3) Adopt placeholder trailer bill legislation to establish a special fund—the Licensing and Certification Fund—and any necessary language regarding the collection of fees; (4) Reject the Administration's remaining trailer bill language changes without prejudice since policy legislation is proceeding on these issues; (5) Adopt trailer bill language which requires the DHS to provide the Legislature with a hiring plan for these positions by no later than October 1, 2006; and (6) Adopt Budget Bill Language that exempts all clinical positions within the L&C Division, including but not limited to, medical, nursing and pharmacy staff, from any unallocated reductions (i.e., any reductions would have to be done through the budget process with the approval of the Legislature).

Significant concerns regarding the state's nursing homes and the oversight of these homes by the DHS L&C Division have been documented and expressed in many venues. The DHS has begun to recognize the need to proceed with changes and has identified a substantial workload need through their analysis. As such, all of the 141 positions should be approved (at appropriate levels) in order to begin to get California back on track for providing consistent, quality care in nursing homes.

Further, this is not a time to experiment with using less qualified levels of personnel in the L&C survey arena. The DHS L&C Division has enough issues on its plate at this time and should not proceed with the extensive use of LVNs and/or Psychiatric Technicians to see whether they can or cannot pass the federal examination and whether the quality of the surveys are impacted.

Finally, the L&C Division was clearly, unfairly impacted by the various "unallocated" reductions and vacant position reductions allowed for in prior budgets. This area deserves and needs protection from these actions in the future in order to protect the public's health and safety.

In addition, the Administration needs to evaluate the need for a pay differential for the L&C Division nursing classifications.

Questions. The Subcommittee has requested the DHS to respond to the following questions.

1. DHS, Please provide a brief summary of the request, including the trailer bill language.
2. DHS, Please describe your hiring plan, as well as any recruitment and retention efforts that have been implemented.
3. DHS, Please describe key system efficiencies or improvements that have been undertaken.
4. DHS, When will information regarding fee adjustments for all affected facilities be available?

3. Additional Staff for Fingerprint Investigation & Proposed Trailer Bill
(See Hand Out)

Issue. The DHS is requesting (1) an increase of about \$1.3 million (proposed Licensing and Certification Fund) to add 14.5 positions to the existing fingerprint investigation unit at the DHS, (2) \$65,000 in one-time only contract funds, and (3) trailer bill legislation to change the criminal background check process. Each of these is discussed below.

The DHS states that these resources are requested to address a current backlog and to meet critical workload increases in the Professional Certification Branch that will result from technical upgrades to the Department of Justice's electronic system which generates criminal offender record information to the DHS Fingerprint Investigation Unit.

First, 14.5 new positions are requested with ten being two-year limited-term appointments and 4.5 being permanently established. The DHS requested positions and their key functions are as follows:

- **Ongoing Workload for Conviction, Hearing and Settlement Process (4.5 New Positions).**
There are presently 7 existing Health Facility Evaluator II's (HFE II's) that perform "conviction" workload (5,400 cases per year). In order to address an *additional* workload of 4,992 cases per year with the onset of the DOJ computer system upgrades, the DHS is requesting 2.5 new HFE II's for this purpose and is redirecting one HFE II as well (total of 3.5 HFE II's).

The DHS is also proposing to redirect two HFE II's to represent the DHS in appeal hearings and related administrative actions that result in denials or revocations of certificates or licenses.

In order to manage the 5.5 positions noted above (i.e., 2.5 new and 3 redirected), the DHS is requesting a clerical support position—Office Technician--, and a management position—Health Facilities Evaluator Manager I. These two new positions will also address existing workload issues within the unit. **Therefore, a total of 4.5 new positions are requested for these functions, including 2.5 HFE II's, an Office Technician and a manager position.**

- **Backload Workload--(10 New Two-Year Limited-Term Positions).** The DHS is requesting ten two-year limited-term positions—7 HFE II's, one Manager I, and two Program Technicians—to address a backlog of “arrest only” criminal offender record information (CORI) records. These positions would process conviction information at a rate of 984 convictions per analyst plus supporting staff (i.e., 9,840 records).

Over 24,000 “arrest only” records have accumulated and the DHS continues to receive an average of 9,600 additional “arrest only” records annually. Current efforts to reprogram DOJ’s “subsequent arrest notification” system and to conduct a one-time run of the existing backlog of “arrest only” records will result in follow up dispositions. The DHS states that the majority of these dispositions (about 52 percent) will reveal a conviction and will lead to further workload to remedy. The DHS notes that backlogs of conviction cases will affect the health and safety of residents in long-term care facilities statewide, as they prevent taking the necessary denial action against caregivers.

Second, the request also includes \$65,000 (proposed Licensing and Certification Fund) in one-time only contract funds to conduct a feasibility study to provide the DHS with a long-term automation solution to provide efficiencies to the system. The DHS states that this proposed feasibility study will identify the current problems with the system, define the business requirements, and provide potential alternative solutions.

Third, substantial trailer bill language is proposed to change the criminal background check process, including definitions of serious crimes and related matters. It should be noted that the Administration is sponsoring **SB 1759 (Ashburn)** to implement this proposed legislation. Due to the substantial policy issues involved it was recommended for the Administration to utilize the policy committee process in lieu of trailer bill language.

Background—Description of the Process. The DHS is responsible for conducting criminal background reviews of Certified Nurse Assistants (CNAs), Home Health Aides, and individuals associated with specified licensed care facilities that have access to vulnerable clients.

About 40,000 applicants for certification or employment in facilities licensed by the DHS annually submit fingerprints to the DOJ. In response to these submissions, the DOJ conducts a search of its automated database and provides the DHS with a notification that the individual has either: (1) no criminal offender record information, (2) a conviction, or (3) an arrest with no final disposition.

Of the fingerprints transmitted, the DHS receives 14,800 “criminal offender record information” (CORI) responses annually that must be processed, reviewed, and categorized by the type of criminal activity shown on the record. The CORI may contain convictions, or only an arrest with no final disposition. Arrest or conviction information is also generated when criminal activity occurs after a person becomes certified or employed.

About 5,200 of the CORI that are reviewed contain conviction information. These records represent the bulk of work being performed by the existing DHS staff. Staff must review the entire criminal history to determine if the conviction is for a crime that requires the department to deny the application or revoke the certificate. If such a conviction is present, the DHS must take

action to either deny the individual's certification or employment, or to revoke their certification. If the conviction is for a crime other than one that requires denial or revocation, the case is assigned to a Health Facilities Evaluator II. These cases are triaged to determine priority and severity levels. Those who appeal the adverse actions are afforded an administrative hearing.

When the CORI contains an "arrest only", a notation of the existence of the record is made in the licensing system and the records are classified based upon severity. The majority of these records are not actionable because they lack the conviction disposition necessary to support a denial or revocation action. These CORI's are filed away.

Legislative Analyst's Office Recommendation. The LAO recommends approval of the staff request for 14.5 positions. No issues were raised regarding the workload.

Subcommittee Staff Recommendation. It is recommended to (1) approve the 14.5 positions, and (2) delete the proposed trailer bill legislation regarding criminal background checks without prejudice since policy legislation is moving and the changes will probably require considerable policy discussion.

Questions. The Subcommittee has requested the DHS to respond to the following question.

1. **DHS,** Please provide a brief summary of the request.

4. Long-Term Care Rate Adjustments per AB 1629, Statutes of 2004—DHS Staff & Local Assistance Discussion (See Hand Out)

Issue. The budget proposes four actions regarding the implementation of AB 1629, Statutes of 2004. **These proposed actions include:** (1) an increase of \$5.3 million (\$2.7 million General Fund) for the DHS to establish 55 positions, (2) an increase of \$1.5 million (\$750,000 General Fund) for a contract, (3) an increase of \$787 million (\$393.5 million General Fund) in local assistance to reflect the requirements of legislation, including various rate adjustments for freestanding nursing facility level B and certain adult subacute facilities, and (4) trailer bill legislation. Each of these issues is discussed below.

First, the DHS is requesting to establish 55 positions. Of these positions, 41 of them are new and 14 were administratively established to commence with the initial implementation of AB 1629. Funding was provided to the DHS in the legislation for 2004-05 and 2005-06 for initial implementation purposes. However, the funding for the 14 administratively established positions expires in the current year. **As such, the DHS is requesting to establish all of these positions and to fund them on an ongoing basis, except for a half-time position which is limited-term.**

The DHS states that continued implementation of AB 1629 will significantly impact their workload in five areas of the DHS—(1) Administration Division, (2) Audits and Investigations, (3) Licensing and Certification, (4) Medi-Cal Policy Division, and (5) Legal Office. Their proposed request by area is outlined below.

- ***Administration Division (4 Positions—continue funding).*** Three Accounting Technicians and an Accounting Office are requested to due to the following key functions: (1) process for deposit the quality assurance fees from 1,100 facilities, (2) track the reconciliation of payments, and (3) managed the payment collection process.
- ***Audits and Investigations (22 Positions).*** This request includes (1) 19 Health Program Auditor III's, (2) two Health Program Audit Manager I's and (3) one Management Services Technician to perform facility audits and accumulate the data necessary to be used in the rate setting process required by AB 1629. To implement these requirements, the DHS will need to issue an annual audit report for each skilled nursing facility (Level B) that requires a Medi-Cal rate. Existing staff is presently only required to do full scope audits on about one-third of the existing 1,100 Level B's.
- ***Licensing and Certification (9.5 Positions—continue funding).*** This request seeks approval for (1) 5 Associate Governmental Program Analysts (AGPA), (2) three Research Program Specialists, (3) one Management Services Technician, and (4) a half-time limited-term position (to December 31, 2008) to do specified work. This work includes (1) conduct field work to do research and data gathering, (2) data analysis necessary to produce reports (January 1, 2007 report and January 2008 report as referenced in the background section below), and, (3) develop regulations to clarify certain aspects of legislation (i.e., half-time position). **It should be noted that the DHS is also proposing \$500,000 (\$250,000 General Fund) to contract for preparation of these reports as well.**

- **Medi-Cal Policy Division (2 Positions—continue funding for one and one new).** The DHS is requesting funding to continue an AGPA position and to obtain a new AGPA position. The first AGPA (continuing) is requested to annually calculate the capital cost category of the rate for nursing homes as contained in AB 1629.

The second AGPA (new) is requested to develop, implement, administer and monitor the quality assurance fee. This position would be required to calculate, assess and collect the quality assurance fee.

The DHS also will be using a contractor to assist in completing and implementing a new rate system for the facilities as contained in the legislation. This contract is for \$1 million (\$500,000 General Fund). The DHS notes that is imperative that the consultants continue to assist the DHS with the development and the operational aspects of the new rate methodology.

- **Legal Office (18 new Positions).** This request includes (1) 5 Health Program Auditor IV's, (2) Three Administrative Law Judges, (3) 6 attorneys, (4) 3 Senior Typists, and (5) one Legal Analyst. The DHS contends that these resources are needed to address the *anticipated* increase in appeals on audit adjustments and each facility's specific reimbursement rate. Any audit adjustment that results can be appealed through the department's administrative hearing process (two levels of appeals provided through this process).

Trailer bill legislation is proposed which would enable the DHS to reduce, on a weighted average, facility specific basis, the projected reimbursement rates established by AB 1629, in an aggregate amount sufficient to pay for any General Fund expenditures necessary for the DHS to administer the program. The Administration contends that this language is necessary in order to maintain the "cost neutrality" of the legislation and the agreement that constituency groups had with the Administration.

Summary of Key Aspects of AB 1629, Statutes of 2004. Among many things, the legislation authorized the DHS to do the following key functions:

- Require a "quality assurance fee" on certain skilled nursing home facilities effective as of July 1, 2004. This fee is then matched with federal funds.;
- Implement by August 1, 2005, a new facility-specific Medi-Cal reimbursement methodology for certain skilled nursing home facilities;
- Collect baseline information regarding certain skilled nursing home facilities including staffing levels, worker wages and benefits, resident's care, and citations and report to the Legislature by January 1, 2007; and
- Report to the Legislature by January 1, 2008 on other various data items.

Legislative Analyst's Office Recommendation—Approve 46 Positions of 55 Positions. The LAO concurs with the DHS on their request for staff except for in the Legal Office. **Specifically, the LAO recommends reducing the request for the Legal Office by half for a reduction of nine positions.**

Second, the LAO believes that 5 of the Associate Governmental Program Analyst (AGPA) positions in the Licensing and Certification section should be funded using the Licensing and Certification Fund (fee-supported), in lieu of the proposed General Fund support.

Third, the LAO is recommending eliminating \$500,000 (\$250,000 General Fund) for the contract to report the data report. **These three recommendations would result in savings of \$1.5 million (\$1 million General Fund).**

Subcommittee Staff Recommendation. It is recommended to (1) adopt the LAO recommendation regarding the reduction in Legal Office staff and the use of the Licensing and Certification Fund for specified positions, (2) retain the DHS request for the contract funds (data reports and fiscal assistance), **and** (3) adopt placeholder trailer bill language, in lieu of the Administration's, to more narrowly limit the Administration's language regarding the use of the quality assurance fees for the payment of DHS' expenditures to administer the program.

The savings from this recommendation would be about \$800,000 General Fund.

Questions. The Subcommittee has requested the DHS to respond to the following questions.

1. **DHS**, Please provide a brief summary of the request, including the positions and proposed trailer bill language.

5. Long-Term Care Rate Adjustment for Other Facilities—Local Assistance

Issue. Using the standard rate methodology for long-term care facilities as contained within California's Medi-Cal State Plan, the budget provides an increase of \$181.2 million (\$91 million General Fund). The rate increases are effective as of August 1, 2006.

These are those long-term care facilities that are *not* defined in AB 1629, Statutes of 2004, including freestanding Level A nursing homes, Distinct-Part Level B nursing homes, and adult sub-acute facilities that provide long-term care (such as Intermediate Care Facilities for the Developmentally Disabled (ICF-DD)). Costs for managed care programs have also been included in this proposal. These managed care costs consist of the long-term care components of all County Organized Healthcare systems and long-term care components (such as PACE and SCAN, and OnLok).

The cumulative weighted increase for Level A nursing facilities, Distinct-Part Level B nursing homes, Rural Swing beds and Pediatric Subacute Facilities is 14.70 percent. For Intermediate Care Facilities for the Disabled, including Habilitative and Nursing (ICF-DD, ICF-DD/N and ICF-DD-H), it is 6.17 percent.

Subcommittee Staff Recommendation. It is recommended to approve these increases as proposed, pending receipt of the May Revision. The May Revision will make some adjustments to these figures but nothing substantial.

Questions. The Subcommittee has requested the DHS to respond to the following questions.

1. DHS, Please provide a summary of the proposal.

6. Aged Drug Rebates—Extend 11 Positions for One-Year

Issue. The DHS is requesting to extend 11 positions for one year (to June 30, 2007) for increased expenditures of \$988,000 (\$494,000 General Fund) to complete work related to aged drug rebates. These positions were originally authorized in the Budget Act of 2003 on a three-year limited-term basis. **All of these positions are presently filled.**

The purpose of these positions is to collect on drug rebates owed to the state by drug manufacturers. These “aged” drug rebates are in dispute and must be reconciled through the DHS system and with the manufacturers. The DHS notes that in 2003 there was about \$300 million (total funds) in aged rebates and by December 2005 there was about \$150 million (total funds). Further by the end of 2006 they anticipate that the amount will about \$100 million.

The dispute resolution process is complex and requires a high level of skill to operate the Rebate Accounting and Information System and the rebate-related software applications, and to learn the dispensing patterns of the drugs. As such, continuation of the exiting staff is important in order to reduce the backlog. Staff has also created automated claims analysis tools, made improvements in the Rebate Accounting and Information System and related items to improve efficiencies.

Subcommittee Staff Recommendation—Capture Savings of \$7.5 million GF. It is recommended to (1) approve the request to extend the positions for an additional year, *and* (2) reduce the Medi-Cal local assistance item by \$15 million (\$7.5 million General Fund). The DHS concurs with the recommended savings level identified for 2006-07. No other issues have been raised.

Questions. The Subcommittee has requested the DHS to respond to the following questions.

2. **DHS,** Please briefly state the need to continue the positions and is the \$7.5 million GF savings achievable in the budget year?

7. Disease Management Pilot Program Implementation—LAO Issue

Issue. The Legislative Analyst's Office (LAO) is recommending a reduction of \$750,000 (\$375,000 General Fund) in the current-year and \$1 million (\$500,000 General Fund) in the budget year to reflect a delay in the implementation of the Disease Management Pilot Project. This proposed reduction pertains to the first pilot project which would address the following conditions: Advanced Atherosclerotic Disease Syndrome, Asthma, Coronary Artery Disease, Diabetes and Chronic Obstructive Pulmonary Disease (i.e., Disease Management Project #1)

The DHS' Request for Application (RFA) to conduct a fee-for-service pilot project for Disease Management, as directed by the Legislature, was initially released by the DHS on March 15, 2006. Subsequently, there have been three addendums to the RFA document with the last one being released on April 3rd.

The Governor's budget had assumed that payments to the awarded contractor would commence as of May 2006. However the DHS RFA proposes an implementation date of August 1, 2006. **As such, payments to the contractor will not begin until at least October 2006. As such, the LAO has proposed a reduction to the budget to reflect this revised timeframe.**

Additional Background Information. The Disease Management Pilot Project was approved by the Legislature through the Budget Act of 2003. The purpose of this three-year pilot project is to test the efficacy of providing a disease management benefit to Medi-Cal enrollees. This is to include, but not be limited to, the use of evidence-based practice guidelines, supporting adherence to care plans, providing patient education, monitoring, and strategies for healthy lifestyle changes.

The program will provide a range of services that are to enable enrollees to remain in the least restrictive and most homelike environment while receiving the medical care necessary to protect their health and well being. **The contractor is to provide these services to persons who are 22 years of age or older and have a primary or secondary diagnosis of one of the following chronic diseases:** (1) arteriosclerotic disease syndrome, (2) congestive heart failure, (3) coronary artery disease, (4) diabetes, (5) asthma, or (6) chronic obstructive pulmonary disease.

Subcommittee Staff Recommendation. It is recommended to adopt the LAO recommendation to eliminate funding in the current year for savings of \$750,000 (\$375,000 General Fund), and to reduce the budget year proposal by \$1 million (\$500,000 General Fund).

Questions. The Subcommittee has requested the DHS to respond to the following questions.

1. **DHS,** Please provide a status update on the Disease Management Pilot Project.

8. Treatment Authorization Processing—Request for More Staff

Issue. The DHS is requesting an increase of \$713,000 (\$285,000 General Fund) to hire 6 permanent positions to create a “Quality Assurance and Program Integrity” unit to collect, manage, and monitor Medi-Cal utilization review data, optimize and expand the current “e-TAR” and auto-adjudication process, and improve the overall utilization review process.

It should be noted that the DHS uses a relatively larger staff than private health plans to process TARs. **Currently the DHS utilizes about 660 positions, including positions under the EDS contract (i.e., the Medi-Cal Program’s Fiscal Intermediary).** Most of these positions are in Medi-Cal Field Offices (6 statewide) and in two regional Pharmacy Units.

The DHS also uses the “Service Utilization Review Guidance and Evaluation (SURGE) system which is a computer processing system to review and adjudicate “Treatment Authorization Requests” (TARs). SURGE has been operational for several years, with a new infrastructure implemented in April 2005. Further, the “e-TAR” process allows provides to electronically enter a TAR request, which can then be electronically adjudicated in SURGE. The e-TAR is used for both pharmacy and medical submittals; however the use for pharmacy submittals is greater.

The DHS states that the positions and their key functions would be as follows:

- **Staff Services Manager I.** This position assists in planning, directing and implementing the “Quality Assurance Management Program” for the TAR adjudication process on a statewide basis. They would ensure uniformity and consistency in program implementation and compliance with state and federal regulations, guidelines and procedures through the six Medi-Cal Field Offices and two pharmacy units.
- **Medical Consultant II.** This would position would review TAR adjudication decisions of the field offices to assure the quality and uniformity of decisions, and monitor appeals and fair hearing outcomes for consistency in implementation of laws and regulations. In addition, they would provide technical guidance to consultants in the field, as well as providers.
- **Nurse Consultant II.** This position would (1) establish and maintain cooperative relationships with DHS Field Office administrators and clinical consultants to provide complex nursing and program consultation for issues with TAR adjudication, and (2) plan, organize, develop and conduct fact-based research projects on the provision of healthcare services in the fee-for-service Medi-Cal Program, including outcome measures of the TAR adjudication process.
- **Research Analyst II.** This position would (1) manage data for the statewide TAR adjudication utilization management program, (2) perform statistical analyses of TAR decisions statewide, and (3) prepare ad hoc studies related to various intervention methodologies for ensuring uniformity of TAR adjudications and effectiveness.
- **Research Analyst II.** This position would (1) develop and implement an in-depth and technical cost benefit analysis of the TAR process and determine which additional TAR categories or services that would qualify for an automation methodology utilizing advanced statistical methods, computer programming, and expert judgment, and (2) consult with management, control agencies, and federal agencies on all phases of the TAR automation.

- **Associate Governmental Program Analyst.** This position would (1) be responsible for the data management of the statewide Medical TAR Automation process, including the planning and implementation of management reports, training and supporting provider staff in the use of the database, and (2) collaborate with DHS staff and other researchers on various projects.

Additional Background Information--TARs. Medi-Cal requires providers to obtain prior authorization for specific medical procedures and services before Medi-Cal reimbursement can be approved. To file a TAR, providers must fill out one of several types of TAR forms and forward the TAR, usually by mail but also electronic, to the appropriate DHS TAR office (six Medi-Cal Field Offices and two Pharmacy offices). The DHS then processes the TAR to either (1) approve, (2) modify—such as quantity of service, (3) defer—return to provide for more information, or (4) deny the request.

Generally, the purpose of any prior authorization system is to (1) assist in reviewing medical necessity, (2) assist in cost control, and (3) assist in fraud detection.

Additional Background Information—Budget Act of 2004. The Budget Act of 2004 provided the DHS with **18 new staff** for improvement to the TAR system. In addition, trailer bill legislation was enacted which, among other things, provides for the following:

- Enables the DHS to design and implement a sampling methodology for TARs in order to keep abreast of health care industry trends and to manage an efficient and effective Medi-Cal Program;
- Requires the DHS to provide their sampling methodology to the Legislature by July 1, 2005; and
- Directs the DHS to pursue additional means to improve and streamline the treatment authorization request process, including where applicable, those identified by independent analyses such as the July 2003 report by the CA Healthcare Foundation regarding the DHS' TAR system.

The trailer bill legislation was enacted in response to various constituency concerns that are dissatisfied and frustrated with the DHS TAR process which they contend results in financial risk to providers and medical risk to Medi-Cal recipients. Suggestions from constituency groups in the past have included (1) reduce the number of services that require TARs, (2) reduce the number of TARs processed by the DHS (such as the use of sampling), and (3) develop a standard set of adjudication guidelines and publish common instructions for both DHS Field Offices and providers so that the rules are clear. The intent of the 2004 trailer bill language was to move this conversation along.

CA Healthcare Foundation (CHF) Report—2003. This CHF Report provided a comprehensive, concrete set of recommendations. The following highlights key recommendations that were provided:

- Create comprehensive guidelines for TAR adjudication or use standard utilization management programs like other health care provider organizations do;
- Reduce the number of services that require TARs;

- Develop a specific strategy for the evaluation of pharmacy TARs;
- Develop different TAR sampling methodologies for providers.

Again, the intent of the trailer bill legislation from 2004 was to address some of these issues.

Legislative Analyst’s Office Recommendation—Deny the Request. The LAO recommends denying the entire request. They can find no justification for the six additional staff positions as requested and note that 18 additional positions were just provided in the Budget Act of 2004.

Further, they note that the DHS indicates that the percentage of pharmacy TARs submitted using a new electronic “e-TAR” submission process rose fourfold in 2005, while the percentage of medical TARs submitted using e-TAR roughly doubled. This growth in the use of e-TAR should reduced staff workload by more than enough for the DHS to undertake its proposed new projects to improve the TAR process without additional staff as requested.

Subcommittee Staff Recommendation. It is **recommended to approve only three of the requested positions—Staff Services Manager I, Medical Consultant II, and the Nurse Consultant III. The remaining three positions should be denied.** (It should be noted that the state will receive enhanced federal funds (at the 75 percent match level) for the two clinical positions recommended for approval.)

The DHS needs to vastly improve its TAR processing system. The CA Healthcare Foundation Report (2003) clearly articulated the need for the DHS to restructure its antiquated system and to improve its review of the TARs. It is unfortunate that the DHS has not progressed further along in revamping its process and it appears that the only way to make advances is to provide some staff for this directed effort.

Questions. The Subcommittee is requesting the DHS to respond to the following questions.

1. **DHS,** Please provide an update on the sampling methodology.
2. **DHS,** Please provide a brief summary of the request.

9. Health Insurance Portability and Accountability (HIPAA)--Staff

Issue. The Subcommittee is in receipt of a Finance Letter from the DHS is requesting position authority to establish 12.5 limited-term positions to expand their efforts to comply with the federal Health Insurance Portability and Accountability Act (HIPAA). Expenditures of \$1.3 million (\$322,000 in Reimbursements from the CA Office of HIPAA, and \$1 million in federal funds) will be incurred by the DHS for these positions.

The DHS currently has an approved HIPAA advanced planning document for the projects to be addressed in this Finance Letter. The DHS says they have worked closely with the federal CMS on these issues and will continue to do so. **The requested positions would be used to do the following HIPAA functions:**

- ***Implement the federal “Transaction and Code Sets” rule (1.5 Limited-Term Positions).*** Among other things, HIPAA requires the DHS so have the ability to send (1) monthly premium/capitation payments in a standardized electronic format to providers, and (2) enrollment information to providers in a standardized format. The DHS is using contracted resources to perform detailed assessments of these business functions and to implement a solution. There are two pieces of software associated with these changes, as well as a need to conduct data entry. **The DHS is requesting one limited-term Associate Information System Analyst and a half-time limited-term Key Data Operator for these purposes.**
- ***Universal Product Number Pilot Project (8 Limited-Term Positions).*** The federal CMS has approved for the DHS to demonstrate the cost-effectiveness of the “Universal Product Number” (UPN) standard for the payment of medical supplies. This project requires the DHS to replace over 4,600 local medical supply codes for HIPAA compliance, in addition to the adopt of UPN standards. This is a two-year project that will result in cost savings to the state after it is implemented. It is estimate that up \$30 million (total funds) annually can be obtained through the collection of additional rebates agreed to in the contracting process. **The DHS needs eight limited-term positions as follows for this purpose:**
 - An Associate Information Systems Analyst and a Staff Information Systems Analyst (i.e., two positions) to oversee the design, development and implementation of changes to the Medi-Cal Information System to allow the use of the UPN as the billing code for medical supplies;
 - Two Associate Information Systems Analysts to support the ongoing workload associated with the UPN implementation;
 - Two Pharmacists, an Associate Governmental Program Analyst and a Nurse Consultant III (i.e., four positions) to support the negotiations and implementations of medical supply manufacturer’s contracts.
- ***National Provider Identifier (3 Limited Term Positions).*** This rule establishes a national identifier for all providers that will be used to bill all payers, including Medi-Cal, Medicare, and private insurance. All DHS programs must be assessed and remediated for their usage of the provider ID, including the County Medical Services Program, CHDP, CCS and others.

The DHS is requesting an AGPA and two Staff Information Systems Analyst positions for this purpose.

Additional Background—HIPAA and Needed State Actions. HIPAA, enacted in 1996, outlines a process to achieve national uniform health data standards and health information privacy in the U.S. It requires the adoption of standards by the federal Secretary of Health and Human Services to support the electronic exchange of a variety of administrative and financial health care transactions. The federal government has published and continues to publish, multiple rules pertaining to the implementation of HIPAA. These rules will be publishes in waves and over the next several years. Among the standards are:

- Electronic transaction and data elements for health claims and equivalent encounter information, claims attachments, health care payment and remittance advice, health plan enrollment and disenrollment, health plan eligibility, health plan premium payments, first report of injury, health claim status and other items;
- Unique identifiers for individuals, employers, health plans and health care providers for use in the health care system;
- Code sets and classification systems for the data elements of the transactions identified (conversion of all local codes to national standard codes); and
- Security and Privacy standards for health information.

Subcommittee Staff Recommendation. It is recommended to approve the positions. No issues have been raised by the LAO or Subcommittee staff.

Questions. The Subcommittee has requested the DHS to respond to the following questions.

1. **DHS,** Please provide a brief summary of the request.
2. **DHS,** Please provide a brief update on the status of HIPAA implementation within the Medi-Cal Program.

10. Processing for Breast and Cervical Cancer Treatment Program—More Staff

Issue. The DHS is requesting to (1) convert 11 positions from limited-term to permanent status, and (2) add 15 new positions to continue to eliminate a backlog of applications and to address caseload increases in eligibility determinations for the Breast and Cervical Cancer Treatment (BCCTP) Program. **The budget proposes an increase of \$1.9 million (\$951,000 General Fund) for this purpose. No adjustments to local assistance funding are proposed by the Administration.**

The DHS contends that these 26 positions are needed to address (1) current and ongoing workload, and (2) a backlog of workload in *both* the eligibility determinations area and the eligibility redetermination area.

The DHS was originally provided 13 staff for the program in 2001, including (1) six Associate Governmental Program Analysts, (2) three information systems analysts, (3) a Staff Services Manager I, (4) a Medical Consultant II, (5) a Research Analyst II, and (6) an Office Technician.

The Budget Act of 2004 augmented this baseline level by providing 11 limited-term positions (all set to expire as of December 31, 2006) to address a backlog in applications and the review of the eligibility of participants.

First, the DHS wants to convert the existing 11 limited-term positions received in the Budget Act of 2004 to permanent status. These positions include (1) 8 Associate Governmental Program Analysts (AGPAs), (2) a Staff Services Manager I, (3) an Associate Medi-Cal Eligibility Analyst, and (4) an Office Technician. These positions would be used to work on the backlogs of both eligibility and redeterminations, and when these backlogs are completed, they would be shifted to address new redeterminations. **All of these positions are presently filled.**

Second, the DHS is requesting an increase of 15 new positions of which four would be two-year limited-term positions and 11 would be permanent. These positions include (1) 4 AGPAs (two-year limited-term), (2) a Staff Services Manager I, (3) 9 AGPAs, and (4) an Office Technician. These positions would be used to (1) address retroactive coverage requests received as a result of notification of the availability of retroactive coverage to current and past BCCTP eligibles, and (2) eliminate and stay current with the annual redeterminations.

The DHS notes the following program statistics:

- There are currently 12,900 BCCTP eligibles (2,900 State-Only Program and 10,000 federal program).
- About 225 new applications are received each month, of which 155 are for the federal program and 70 are for the State-Only Program.
- There is a backlog in making federal eligibility determinations as required. As such the DHS states that the program is not in full compliance with federal rules regarding eligibility determinations, annual redeterminations and requests for retroactive coverage.

Background on Current Program Operations. The Budget Act of 2001 and accompanying trailer bill legislation implemented the federal option to provide certain health care services to individuals with breast and cervical cancer. The Breast and Cervical Cancer Treatment Program (BCCTP) was implemented January 1, 2002.

The BCCTP uses an internet-based application for initial eligibility determination. Under this process, a provider conducts an initial screen for eligibility and then the DHS makes the final eligibility determination. (This method conforms to federal law which requires a governmental entity, such as a state or county government, to make final Medi-Cal eligibility determinations.)

An individual can qualify for either the “state-only” portion of the program (limited-scope benefits related to cancer treatment only) or full-scope Medi-Cal services. The DHS staff is required to evaluate all BCCTP recipients receiving full-scope, federally funded Medi-Cal services within a 45-day timeframe to ensure they meet federal criteria and are indeed eligible for federal matching funds. If the individual does not meet these criteria, they are eligible for limited-scope, cancer treatment services only (up to 18 months for breast cancer treatment and 24 months for cervical cancer treatment).

Legislative Analyst’s Office Recommendation—Deny 9 Positions and Provide 11.5 Positions.

The LAO recommends (1) savings of \$870,000 (\$435,000 General Fund) in state support by reducing the position request, *and* (2) savings of \$6 million (\$2 million General Fund) in local assistance due to a shift of some participants from full-scope program services to more limited state-only benefits as the DHS reviews the backlog as stated.

With respect to the state staff, the LAO recommends to (1) reject 9 positions, including 8 AGPA positions and an Office Technician, and (2) approve 17 positions.

The 17 positions the LAO would recommend approving, include the following:

- Establish 4 *existing* limited-term positions as permanent, including the Associate Medi-Cal Eligibility Analyst and three AGPAs. Currently, these positions expire as of December 31, 2006. The DHS proposes making these positions permanent.
- Continue 7 *existing* as limited-term positions (set to expire as of December 31, 2006) for another two-years (extension to December 31, 2008), including one Staff Services Manager I position, 5 AGPAs, and an Office Technician. The DHS proposes making these positions permanent.
- Approve 6 *new* limited-term positions, including 5 AGPAs and one Staff Services Manager I. These positions would commence as of July 1, 2006. The DHS proposes making 4 of the AGPAs as limited term, and making the remaining 11 *new* positions permanent.

The LAO also recommends savings of \$6 million (\$2 million General Fund) in local assistance due to a shift of some participants from full-scope program services to more limited state-only benefits as the DHS reviews the backlog as stated.

Subcommittee Staff Recommendation. It is recommended to (1) approve the DHS request to make the *existing* 11 limited-term positions permanent, (2) approve the DHS request to add 4 limited-term AGPAs as requested, (3) approve the DHS request for the Staff Services Manager I and Office Technician, and (4) reduce the DHS request for 9 new AGPAs to provide only 2 AGPAs. **Therefore, the overall DHS request would be reduced by 7 AGPA positions for savings of about \$320,000 General Fund. This recommendation provides a total of 19 positions (15 permanent and 4 limited-term as noted).** As compared with the LAO, it provides the Office Technician position and an additional AGPA position, plus permanent status for all of the presently filled existing 11 limited-term positions.

In addition, it is recommended to concur with the LAO and reflect savings in local assistance of \$6 million (\$2 million General Fund). It makes sense that through the DHS processing of the backlog and redeterminations, some individuals would be shifted to limited-scope coverage.

This level of staffing would address the issues regarding the backlog and would provide the DHS with additional resources to process new applications. This is a considerable increase in staffing and should substantially facilitate application processing.

Questions. The Subcommittee has requested the DHS to respond to the following questions.

1. **DHS,** Please provide a brief summary of the request.

11. Vital Records Image Redaction and Statewide Access Project (VRIRSA)—Staff & Trailer Language (See Hand Out)

Issue. The DHS is proposing several budget adjustments to implement certain provisions contained in SB 247 (Speier), Statutes of 2002, regarding access to birth and death records. SB 247 requires the DHS to develop safety and security measures to protect against the fraudulent use of birth and death records.

These adjustments include (1) an increase of \$10.8 million (Health Statistics Special Fund) in state support to hire 19 new positions and to fund certain contracts, and **(2)** an increase of \$453,000 (Health Statistics Special Fund) for local assistance. **The DOF has approved the DHS' Feasibility Study Report for this proposed system.**

No General Fund support is requested. Further, no fee increases are associated with this request. **The special fees levied by SB 247 are sufficient to cover the proposed expenditures.**

In addition, the DHS is proposing trailer bill legislation to (1) delete an implementation date contained in the enabling legislation, and **(2)** delay the perforated paper requirement in order to coincide with pending federal legislation related to the Intelligence Reform Act and the Real ID Act of 2005.

First, an increase of \$10.8 million (Health Statistics Special Fund) is requested in state support to **(1)** fund 19 new positions, **(2)** contract for the Vital Records Image Redaction and Statewide Access Project (VRIRSA) system development, and **(3)** purchase equipment. Of this requested total amount, \$6.1 million (Health Statistics Special Fund) is *one-time only* funding.

These resources are needed to precede with SB 247 required activities and information technology functions as identified and organized into two components: (1) Statewide Access and Automated Redaction and (2) Computerization of Records. These components are shown in the table below.

2006-07	Statewide Access & Automated Redaction	Computerization of Records
Positions Requested	3 permanent positions	13 permanent positions 3 Limited-Term
Contracted Services & Equipment	\$4 million	\$4.4 million
Estimated Completion	July 1, 2007	December 2015
One-time local assistance funds to local registrars and county recorders	\$453,000 Local Assistance	
Department of General Services (Consultant)	\$8,000	

The state will contract to develop the VRIRSA system. The system will provide the redacted image or copy back to the requesting agency for issuance. The system will provide users the ability to search a special, limited index to locate a specific birth or death record and request

production of an automated redacted copy. Three DHS positions are needed to work with the contractor as shown in the table above.

The state will procure a contractor to computerize all birth and death records not currently imaged on the system. State staff will perform quality checks within each step of the process to ensure that confidentiality and security are maintained and that processes are evaluated to streamline efforts on an on-going basis to improve efficiency. A total of 13 permanent positions and three limited-term positions are needed for this.

The 19 total requested positions include: (1) a Data Processing Manager III, (2) two Staff Information Systems Analyst, (3) five Staff Programmer Analyst, (4) Senior Information Systems Analyst (Supervisor), (5) seven Associate Information Systems Analysts, and (6) three limited-term Staff Programmer Analysts.

With respect to contract funds, a total of \$6.7 million (Health Statistics Fund) is proposed. Of this amount, about \$4 million is for the Statewide Access and Automated Redaction contract and \$2.7 million is for the computerized records contract.

With respect to equipment, a total of \$1.650 million (Health Statistics Fund) is proposed to purchase a “FileNET” backup system located in Richmond and to provide for storage upgrade for this system.

The local assistance funds of \$453,000 (Health Statistics Fund) are a one-time only appropriation.

Additional Background. The DHS is responsible for administering and maintaining vital records in perpetuity and in an unalterable format. The DHS, Local Registrars and County Recorders have routinely issued copies of certificates of births or deaths that occur in California. A fee is charged by the Local Registrar, County Recorder and/or the DHS for each certificate requested.

There are about 45 million vital documents, some dating back to the 1800’s. All of these documents have been microfilmed; however, the quality of these images is insufficient to produce clear copies for legal purposes. As such, the DHS has been creating digital images of the paper documents on a flow basis. About 15 million documents have been computerized (birth from 1985 to present, death from 1995 to present). leaving 30 million remaining.

SB 247 requires the DHS to develop safety and security measures to protect against the fraudulent use of birth and death records. The Legislature specifically included the computerization of records, redacting and removing signatures to produce an informational copy, and electronically distributing informational copies to Local Registrars and County Recorders as actions that must be taken by the DHS.

The legislation mandated these “informational” certified copies of birth and death certificates shall only be printed from a single state database, *effective January 1, 2006*. The DHS subsequently requested and received approval to amend existing law to change the implementation date to July 1, 2007 (AB 1278, Statutes of 2005).

The DHS has submitted and the DOF has approved a Feasibility Study Report (FSR) to determine the breadth and depth of actions needed to comply with the provisions of SB 247. The FSR shows that the automated redaction and distribution of birth and death certificates cannot be implemented until July 1, 2007.

In addition, not all records will be computerized and available through the system on that date. The DHS notes that the computerization effort will take several years to complete.

Legislative Analyst's Office Recommendation. The LAO recommends to (1) approve the 19 positions, (2) *reject* the Administration's proposed trailer bill language regarding the deletion of the implementation date, and (3) adopt Budget Bill Language as shown below. The LAO has raised no issues regarding the workload and need for the positions.

The proposed LAO Budget Bill Language is as follows:

Item 4260-001-0099

Provision 1. Funding in this appropriation for the Vital Records Image Reduction and Statewide Access Project (VRIRSA) and the related computerization of vital records is provided on the following basis:

(a) The Department of Finance (DOF) in collaboration with the Department of Health Services (DHS) and the Department of Technology Services (DTS), shall prepare a revised analysis to determine the most appropriate and cost-effective location for the production and backup services for the VRIRSA Project and the related computerization of records project;

(b) To assist in this effort, DTS shall estimate an interim rate to be charged for its support of VRIRSA infrastructure requirements;

(c) Based on this information, DOF shall develop an appropriate infrastructure implementation approach that is based on the project's cost, support and security needs and is in line with the state's data infrastructure consolidation goals;

(d) Within 30-days of its completion, DOF shall submit the revised analysis to the Chair of the Joint Legislative Budget Committee and the Chairs of the fiscal committees of both houses of the Legislature.

Subcommittee Staff Recommendation. It is **recommended to adopt the LAO recommendation in its entirety.** The positions are needed to complete the work and the request is consistent with the approved Feasibility Study Report. The trailer bill language to delete the implementation date should be rejected. An implementation date needs to remain in order to encourage progress on implementation and the DHS has already had the date changed once before.

Questions. The Subcommittee has requested the DHS to respond to the following questions.

1. **DHS,** Please provide a brief summary of the request, including the positions and proposed trailer bill language.

12. Clinical Laboratory Oversight—Fee Supported Staff Request

Issue. The Subcommittee is in receipt of a Finance Letter requesting an increase of \$947,000 (Clinical Laboratory Improvement Fund) to fund 14 new permanent positions to conduct activities associated with the oversight of clinical laboratories in California.

No General Fund support is requested and no fee increases are proposed to support the positions.

The laboratory field services section of the DHS is required to implement or expand four legislatively mandated programs in 2006-07 and is requesting resources for this purpose. **The DHS states that this proposal is intended to do the following three activities:**

- Provide staff for phlebotomy certification (fourth-year) *and* medical laboratory technician licensure (first-year) as required for the implementation of recent statute;
- Expand federal Clinical Laboratory Improvement Act (CLIA) inspections of waived laboratories as funded by the federal CMS; and
- Allow full licensure and registration of clinical laboratories over the next three-years.

The specific positions and their key functions are as follows.

Phlebotomy Certification and Medical Laboratory Technician Licensure (4 New Positions).

The DHS presently has four positions in this area. They are requesting four new positions including an Examiner I, an Examiner II and two Program Technicians to conduct work associated with certifying phlebotomists and to implement medical laboratory technician licensure.

The DHS is required by law to review phlebotomist and medical laboratory technician applications for accuracy and completeness. This review includes verifying the education requirements, training documents, experience requirements and examination documents. In addition, the application fee has to be processed, the state licensing database updated and a permanent file created for each person.

The medical laboratory technician licensure will be in its first year of implementation. About 1,500 persons will be licensed under this category. The phlebotomy certification will be in its fourth year of implementation and all phlebotomists in the state must by law have the new certification. The DHS expects to receive over 14,000 phlebotomy applications by the end of the 2006 and they presently have a backlog of 5,500 applications.

Expand CLIA Inspections for federal CMS (3 New Positions). The DHS is requesting three new permanent positions—two Examiner I positions, and one Examiner II position—to address new federal requirements related to the implementation of CLIA. The DHS says that existing staff is inadequate to conduct its current inspection duties, let alone to add on these additional responsibilities. These additional responsibilities include the following:

- An increase in the number of on-site compliant inspections is required due to a new federal CMS tracking system which includes the investigation of fraudulent test reporting and billing.

- An increase in enforcement actions is projected because the federal CMS has expanded their requirement for proficiency testing. (Laboratories that fail the proficiency testing will have increased enforcement actions against them by the DHS.)
- An increase in the number of on-site inspections and enforcement oversight of “waived” laboratories is needed because the federal CMS now requires more oversight of these laboratories. (“Waived” laboratories conduct tests that are the least complex procedures.)

The DHS states that these positions will also allow them to prepare for “**CLIA exemption**” (i.e., to eliminate federal oversight of California’s laboratories and just have state oversight of them). It should be noted that CLIA exemption is still several years away from occurring. The DHS needs to have a fully functioning laboratory oversight program before it can bid for CLIA exemption.

It should be noted that the federal government reimburses California with an 80 percent matching grant for these positions. The state uses CLIF funds as the 20 percent match for this purpose. (The DHS has existing federal fund authority within their budget. As such, this Finance Letter only reflects the CLIF funding portion.)

Full Licensure and Registration of Clinical Laboratories (7 New Positions). The existing DHS laboratory oversight is comprised of 8.6 positions (2.6 professional staff with the remaining being clerical support). The DHS contends this level of staffing is inadequate to conduct the legislatively mandated activities of laboratory oversight. For example, they do not have staff to conduct routine onsite inspections, complaint investigations, laboratory registrations, enforcement actions, and other client support functions that should be done. Further, there are significant backlogs in all laboratory licensing and registration activities.

Therefore the DHS wants to establish additional positions to revitalize the laboratory oversight program to (1) administer a complaints and compliance program, and (2) perform laboratory inspections (both north and south). Four Examiner I positions, one Examiner II position and two Program Technicians would be used to perform these activities.

Additional Background—DHS Laboratory Field Services. The DHS administers the state’s oversight of clinical laboratories and licensed laboratory personnel. They are responsible for assuring that clinical laboratories, laboratory personnel, blood banks and tissue banks comply with state and federal law. California has about 18,500 clinical laboratories and over 30,000 licensed laboratory personnel. The DHS currently has 62 existing positions in the laboratory field services section.

The DHS’ activities are funded through license fees authorized by law and by reimbursement under contract with the federal CMS for serving as “state agent” for the Clinical Laboratory Improvement Act (CLIA) in California. The Clinical Laboratory Improvement Fund is the primary source of funding for the DHS in this area, along with some federal fund support and specified fees.

Legislative Analyst’s Office Recommendation. The LAO has raised no issues regarding the request for the positions to address the workload needs.

However the LAO is concerned with the DHS' lack of enforcement in the clinical laboratory program and believes there may be non-compliance by clinical laboratories with federal and state requirements intended to protect the health of the public. The DHS has a broad array of enforcement tools it can use to respond to noncompliant laboratories. These include assessment and collection of civil fines, referral of violators for criminal prosecution, and a cutoff from participation in the Medi-Cal Program. However the DHS has not yet provided detailed information to the LAO regarding these aspects of enforcement.

The DHS has noted that no imposition of fines or penalties has been initiated since 2004-05 with the exception of one high profile case in the Bay Area. The DHS states that this has been due to staff shortages.

The LAO recommends that the Legislature request an audit of the enforcement component of the program by the Bureau of State Audits in 2007-08 (next budget year). The purpose of this audit would be to assess the DHS efforts at enforcing state laws and regulations for clinical laboratories.

Subcommittee Staff Recommendation. It is **recommended to approve the positions** *and to either* adopt uncodified trailer bill language requesting the Bureau of State Audits to conduct an audit of this program in 2007-08, **or** to submit a letter from the Subcommittee Members to the Joint Legislative Audit Committee for their review and consideration.

Questions. The Subcommittee has requested the DHS to respond to the following questions.

1. **DHS,** Please briefly describe the budget request.
2. **DHS,** Please address the LAO's concerns regarding enforcement actions. What is presently being done and what improvements do you foresee because of the staff increase?

LAST PAGE OF AGENDA.